

implementing changes in 23 CFR part 772 for Type II project eligibility. The interim rule prohibits Federal participation in Type II projects unless development predated the existence of any highway.

#### Discussion of Comments

The public comment period for the interim final rule closed on November 27, 1996. The FHWA received two comments from the Illinois Department of Transportation. The response concerning this interim final rule is available for review at the U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590.

The first comment noted that the FHWA went beyond the changes called for by the NHS Act by indicating that "[n]oise abatement measures will not be approved at locations where such measures were previously determined not to be reasonable and feasible for a Type I project." The comment stated that there is no basis in the NHS legislation for this change and questioned the appropriateness of ruling out the possibility of FHWA participation in a Type II project on this basis.

It was the intent of the NHS legislation to prohibit Federal participation in the construction of Type II noise barriers in instances where proper consideration has not been given to highway traffic noise concerns and issues during the local growth and development process, *i.e.*, growth and development has occurred after a highway was constructed and has created unmitigated traffic noise impacts. This intent was meant to limit Federal expenditures for Type II noise barriers.

The questioned statement is meant to place increased emphasis on the importance of noise-compatible land use planning at the State and local level. Highway traffic noise should be reduced through a program of shared responsibility. Thus, the FHWA encourages State and local governments to practice compatible land use planning and control in the vicinity of highways. Local governments should use their power to regulate land development in such a way that either noise-sensitive land uses are prohibited from being located adjacent to a highway, or developments are planned, designed, and constructed to minimize noise impacts. The challenged statement has been left unchanged.

The second comment noted that, while the NHS legislation specifically refers to limiting Federal participation in the construction of Type II noise barriers, revised § 772.13 limits Federal

participation in "noise abatement measures," a broader term that exceeds the clear language of the NHS legislation. As was the case above, the wording "noise abatement measures" in revised § 772.13 was used to meet the intent of the NHS legislation to generally prohibit Federal Type II expenditures in instances where proper consideration has not been given to highway traffic noise concerns and issues during the local growth and development process. Therefore, no change has been made in the final rule.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the Department of Transportation Regulatory Policies and Procedures. The amendment clarifies some of the requirements for Federal participation in noise abatement projects for the 17 States that have constructed at least one Type II noise barrier. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The amendment deals only with the eligibility of certain State highway noise abatement projects for Federal participation. As such, it affects only State highway agencies and not small entities.

##### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. It does not impose any new obligation or requirement on a State. It does not affect the amount of Federal transportation funds that go to a State. A State is not required to have a Type II Noise Program. A State may still expend its own funds on a noise abatement project.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 772

[FHWA Docket No. 96-26; FHWA-97-2348]

RIN 2125-AD97

#### Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

**SUMMARY:** The FHWA is adopting, as final, a current interim final rule that revises the FHWA regulation that allows Federal participation for Type II noise abatement projects—that is, proposed Federal or Federal-aid highway projects for noise abatement on an existing highway. This final rule restricts Federal participation for Type II projects to those that were approved before the date of enactment of the National Highway System Designation Act of 1995 (NHS) (Pub. L. 104-59, 109 Stat. 605) or are proposed along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-way for, or construction of, an existing highway.

**EFFECTIVE DATE:** September 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Armstrong, Office of Environment and Planning, (202) 366-3073, or Mr. Robert Black, Office of the Chief Counsel, (202) 366-1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On August 29, 1996, the FHWA published an interim final rule along with a request for comments in the *Federal Register* (61 FR 45319) as a means of

*Executive Order 12372  
(Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

*List of Subjects in 23 CFR Part 772*

Highways and roads, Noise control.

**PART 772—PROCEDURES FOR  
ABATEMENT OF HIGHWAY TRAFFIC  
NOISE AND CONSTRUCTION NOISE**

In consideration of the foregoing and under the authority of 23 U.S.C. 109(h), 42 U.S.C. 4331, sec. 339(b) of Pub. L. 104-59, 109 Stat. 568, 605, and 49 CFR 1.48(b), the interim final rule amending 23 CFR Part 772 which was published at 61 FR 45319 on August 29, 1996, is adopted as a final rule without change.

Issued on August 1, 1997.

Jane F. Garvey,

*Acting Administrator.*

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